IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No. 1728 of 2006

Shri Bapusaheb Sahebrao Patil ..Petitioner

vs.

1. The State of Maharashtra
and others ..Respondents

Shri Mahadev A.Choudhari with Shri P.K.Deshmukh for petitioner.
Shri A.A.Kumbhakoni, Associate Advocate General with Ms.V.S.Mhaispurkar, A.G.P. for respondent nos.1, 3 and 4
Shri M.P.Vashi i/b Shri P.R.Arjunwadkar for respondent no.2.

CORAM: S.B.MHASE J.
4th April, 2005

P.C.

1. Heard all the learned counsel for the parties.

2. The matter pertains to the disqualification of the petitioner which the petitioner has incurred in view of the provisions of the Maharashtra Local Authority Members Disqualification Act, 1987, hereinafter referred to as the said Act, since he has disobeyed the whip issued by his party. Earlier by judgment of the Collector in Application No. 1 of 2005 dated 26th September, 2005, the petitioner was declared disqualified under the provisions of the said Act. The said order was challenged by the petitioner by filing Writ Petition No. 7084 of 2005. After hearing the parties by consent of the parties the following order was passed by this Court in Writ

Petition No.7084 of 2005.

"a) Keeping the impugned order of the Collector in suspension, the matter is remanded back to the Collector to determine whether the election application no.1 of 2005 filed by the respondent no.2 is in compliance with rules 6 and 7 of the Maharashtra Local Authority Members Disqualification Rules, 1987, hereinafter referred to as the said Rules. The Collector is required to apply his mind and pass speaking order determining whether there is compliance with rules 6 and 7 of the said Rules. The Collector is directed to decide the said issue after hearing both parties within a period of four weeks from today.

b) The matter is remanded for the limited purpose. The order passed by the Collector is against the petitioner, same will not be implemented for a period of two weeks from the date of its communication to the petitioner and the petitioner will be at liberty to challenge the impugned suspended order as well as the fresh order passed by the Collector on its own merits in accordance with law.

c) In the light of the aforesaid petition is disposed of accordingly with no order as to costs.

Parties to act on the authenticated copy of this order."

Thus, in view of this order the matter was remanded to Collector to scrutinise the application filed by the respondent no.2 in writ petition no.7084 of 2005 is in compliance with rules 6 and 7 of Maharashtra Local Authority Members Disqualification Rules, 1987. To that limited extent, the Collector has recorded the finding by his order dated 28th February, 2006. Rule 6 of the said Rules is about the reference to be made to the Collector or the Commissioner, as the case may be, by way of filing the petition. Sub-Rules (3) and (4) of Rule 6 lays down the procedural requirement of the petition to be filed before the Collector or Commissioner, as the case may be. Rule 7(1) lays down the obligation on the Collector or the Commissioner to consider whether the petition complies with the requirements laid down in Rule 6. Sub-Rule (2) of Rule 7 further provides that if the petition does not comply with the requirements of Rule 6, the Commissioner or as the case may be, the Collector shall dismiss the petition and intimate the petitioner accordingly and further sub-rules provide that if the petitioner satisfies the requirements of Rule 6 the Commissioner or the Collector as the case may be shall proceed to hear the petition referred under Rule 6 of the said Rules. By remand order which is referred to above, the Collector was

directed to scrutinize the petition filed by respondent in view of these provisions and to find out whether the petition filed by the respondent satisfies the requirements of Rule 6 and more specifically Rule 6(3) and 6(4). After hearing the parties the Collector has found that rules 6(1), (2), (3)(a) and (b) have been complied with by the petitioner. So far as compliance of rule 6(4) is concerned, it is observed by the Collector that the said Rule is partially complied with, namely, the petition is signed by the applicant but the accompanying documents are not verified by the petitioner in the original application. Now, under these circumstances, the original respondent has approached this Court challenging the said order. The learned Counsel for the petitioner states that the Collector has found that Rule 6(4) is not complied with and, therefore, it was obligatory for the Collector to dismiss the petition filed by the respondent in view of the provisions of sub-rules (1) and (2) of Rule 7 and thus the Collector has failed in discharging his obligation which has been placed on the Collector as a result of the remand order passed by this Court in earlier petition. In order to test the force of this contention, Shri Vashi has taken this Court through the main petition filed under sec.3 read with sec.7 of the said Act and he submitted that the petition is verified as required to be varied under the Code of Civil Procedure. Shri Vashi invited the attention of this Court to the petition and submitted that if there are any annexures to the petition those annexures

are required to be verified as provided in the Code of Civil Procedure. Shri Vashi submitted that if there are no annexures but the documents have been produced by way of evidence in support of the application, such documents are not required to be verified as provided under the Code of Civil Procedure as per Sub-Rule (4) of Rule 6. Shri Vashi relied upon the judgment of the Supreme Court in the matter of **Smt.Sahodrabai Rai Vs.Ram Singh Aharwar and others** reported in A.I.R.1968 Supreme Court 1079. The law then required that even though they are outside the election petition they must be signed and verified but such annexures or schedules are then treated as integrated with the election petition and copies of them must be served on the respondents if requirement regarding service of election petition is to be wholly complied with. But this does not apply to the documents which are merely evidence in the case but which for the reasons of clarity and to lend force to the petition are not kept back but produced or filed with the election petition. They are in no sense the integral part of the averments of the petition buit are only evidence of those averments and in proof thereof.

3. Relying upon the test as laid down by the Apex Court and considering the submissions of both the learned Counsel, I have gone through the original petition filed by the respondent before the Collector. It is to be noted that the facts in respect of the disqualification being

incurred on account of the whip issued by the party as beimg disobeyed by the present petitioner has been sufficiently alleged and verified. It is pertinent to note that in the said petition, none of the documents produced along with the said petition have been made as integral part of the petition, making reference to them by way of annexures, namely, the documents which were produced along with the application were not incorporated as part of the petition stating that they are the annexures to the petition and thus there is no material on record to state that the documents which were produced along with the said petition were annexures to the petition. No doubt, certain documents have been produced but those documents, as Shri Vashi rightly submitted, are by way of evidence in support of the petition and, therefore, it cannot be inferred that there was non compliance of sub-rule (4) of Rule 6 of the said Rules. I agree with the submission made by Shri Vashi. I find that the submissions made by the learned Counsel relying upon the observations made by the Collector in respect of partial compliance of Rule 6(4) is hereby rejected. Petition is devoid of any merits. It is hereby summarily rejected.

(S.B.MHASE J.)